

REMARKS/ARGUMENTS

Claims 13-19, 50 and 59 are pending. Claim 50 has been amended herein. Claims 1-12, 20-49, 51-56 and 58 have been cancelled without intending to abandon or to dedicate to the public any patentable subject matter. Applicants have added new claims 59-67.

Claim Rejections Under 35 U.S.C. § 103

The Examiner has rejected Claims 13-15, 17-19, 50 and 57 under 35 U.S.C. § 103(a) as being obvious over **Aldrich** (U.S. Patent No. 6,425,135) and **DeBaene** (U.S. Patent No. 5,038,408). **Aldrich** teaches a multi-layered knee or elbow pad and **DeBaene** teaches work pants with knee pad inserts. The Examiner contends that **Aldrich** teaches a padding composed of most of the elements of the chamois of the present invention while **DeBaene** teaches the use of a padding composed of a foam material having various elasticities. Applicants disagree with the Examiner's assessment of the cited patent documents and submit that the combination of **Aldrich** and **DeBaene** do not teach or suggest the embodiments of Applicants' invention recited in the currently pending claims.

Obviousness under 35 U.S.C. § 103 is a question of law based the on the factual inquiries stated in *Graham v. John Deere Co.* (383 U.S. 1, 1966), which include: (1) Determining the scope and content of the prior art; (2) Ascertaining the differences between the claimed invention and the prior art; and (3) Resolving the level of ordinary skill in the pertinent art.

Applicants submit that the level of ordinary skill in the art is that of a professional designer of athletic apparel. Turning to the scope of the prior art and the differences between the claimed invention and the prior art, Applicants submit that the cited references to **Aldrich** and **DeBaene** are insufficient to teach one of skill in the art how to make or use a chamois of the present invention as follows:

Neither **Aldrich** nor **DeBaene** teach the following italicized limitations of claim 13:

13. A chamois, comprising:
 - a first cloth layer;
 - the first cloth layer being relatively elastic;*
 - a second cloth layer;*
 - the second cloth layer being relatively elastic and having at least one relatively inelastic portion;*
 - a first continuous foam layer;
 - the first continuous foam layer coupled to the first cloth layer;*

the first continuous foam layer located between the first cloth layer and the second cloth layer and contacting the first cloth layer and the second cloth layer;

the first continuous foam layer being relatively elastic such that the chamois stretches;

at least one foam pad coupled to the first continuous foam layer;

the at least one foam pad positioned between the first continuous foam layer and the second cloth layer;

the first continuous foam layer interposed between the first cloth layer and the at least one foam pad to prevent contact between the at least one foam pad and the first cloth layer; and

the at least one foam pad substantially aligned with the at least one relatively inelastic portion of the second cloth layer, such that the at least one foam pad is inhibited from stretching.

At column 2, lines 29-33, **Aldrich** teaches a multi-layer garment pad wherein “[t]he pad construction 10 comprises in general a waterproof layer 11, a padded layer 12, an outer adhesive layer 13, and an overlap layer 14.” The waterproof layer 11 of **Aldrich** “comprises neoprene rubber material” (column 2, lines 36-37). The padded layer 12 comprises one of “non-woven cotton batting, fleece, or the like” (column 2, lines 42-43). The outer layer 14 comprises a “low friction material such as a polyblend fabric” with “a heat activated adhesive coating” (column 2, lines 56-58). More specifically, **Aldrich** teaches a padded layer (12) positioned between a polyblend fabric outer layer (14) having an adhesive layer and a waterproof neoprene rubber layer 11.

At column 3, lines 7- 9 **DeBaene** teaches a panel 17 consisting “of two layers 19 and 21 which are held by large stitches 22 to the denim making up the front of the leg portion 15.” The outer layer 19 “is formed of leather” (column 3, lines 10-11), while the layer 21 is “a sheet of closed-cell, foamed polymer, such as polyethylene” (column 3, lines 15-16). More specifically, **DeBaene** teaches a foamed polymer layer 21 positioned between a leather layer 19 and a denim layer 15.

Claim 13

A. “*the first cloth layer being relatively elastic*”

Applicants submit that **Aldrich**, in view of **DeBaene** fails to teach “*the first cloth layer being relatively elastic.*” While **Aldrich** and **DeBaene** both teach a first cloth layer, **Aldrich** and

DeBaene are silent regarding the elastic properties of the first cloth layer. More specifically, **Aldrich** teaches a “low friction material such as a polyblend fabric” layer and **DeBaene** teaches a “denim” cloth layer. Applicants submit that one of skill in the art would consider both of these fabrics to lack elastic properties.

B. “a second cloth layer, the second cloth layer being relatively elastic and having at least one relatively inelastic portion,”

Regarding “a second cloth layer, the second cloth layer being relatively elastic and having at least one relatively inelastic portion,” both **Aldrich** and **DeBaene** fail to teach a second cloth layer, much less a second cloth layer having at least one relatively inelastic portion. **Aldrich** teaches a waterproof *neoprene* second layer, while **DeBaene** teaches a *leather* second layer. Therefore, **Aldrich** in view of **DeBaene** fails to teach: 1) a second cloth layer, 2) a relatively elastic second elastic cloth layer, and 3) a second cloth layer having at least one relatively inelastic portion.

C. “the first continuous foam layer located between the first cloth layer and the second cloth layer and contacting the first cloth layer and the second cloth layer,”

Regarding “the first continuous foam layer located between the first cloth layer and the second cloth layer and contacting the first cloth layer and the second cloth layer,” as presented above, **Aldrich** in view of **DeBaene** fails to teach a second elastic cloth layer (having at least one relatively inelastic portion). Therefore, Applicants submit that **Aldrich** in view of **DeBaene** fails to teach a second cloth layer in contact with the foam layer.

D. “the first continuous foam layer being relatively elastic such that the chamois stretches,”

Regarding “the first continuous foam layer being relatively elastic such that the chamois stretches,” **Aldrich** in view of **DeBaene** fails to teach an elastic foam layer. More specifically, **Aldrich** fails to teach a foam layer and **DeBaene** is silent regarding the elastic properties of the foam, much less a chamois having stretchable properties. Therefore, the combination of **Aldrich** in view of **DeBaene** fails to teach a stretchable chamois having an elastic foam layer.

E. “at least one foam pad coupled to the first continuous foam layer,”

Regarding “*at least one foam pad coupled to the first continuous foam layer,*” neither **Aldrich** nor **DeBaene** teach a foam pad, much less a foam pad coupled to a foam layer. The Examiner concedes that **Aldrich** is silent regarding a foam pad (Office Action mailed April 14, 2009, page 3). While **DeBaene** teaches a foam layer 21, **DeBaene** is silent about a foam pad coupled to the foam layer 21. Therefore, Applicants submit that **Aldrich** in view of **DeBaene** fails to teach a foam pad, much less a foam pad coupled to a foam layer.

F. “the at least one foam pad positioned between the first continuous foam layer and the second cloth layer,”

Regarding “*the at least one foam pad positioned between the first continuous foam layer and the second cloth layer,*” **Aldrich** in view of **DeBaene** fails to teach a foam pad and a second cloth layer, much less positing the foam pad between the foam layer and the second cloth layer. Therefore, Applicants submit that **Aldrich** in view of **DeBaene** fails to teach a foam pad positioned between a foam layer and a cloth layer.

G. “the first continuous foam layer interposed between the first cloth layer and the at least one foam pad to prevent contact between the at least one foam pad and the first cloth layer,”

Regarding “*the first continuous foam layer interposed between the first cloth layer and the at least one foam pad to prevent contact between the at least one foam pad and the first cloth layer,*” Applicants submit that **Aldrich** in view of **DeBaene** fails to teach a foam pad, much less a foam layer interposed between the foam pad and a first cloth layer to prevent the foam pad from contacting the first cloth layer.

H. “the at least one foam pad substantially aligned with the at least one relatively inelastic portion of the second cloth layer, such that the at least one foam pad is inhibited from stretching,”

Regarding “*the at least one foam pad substantially aligned with the at least one relatively inelastic portion of the second cloth layer, such that the at least one foam pad is inhibited from*

stretching,” Applicants submit that **Aldrich** in view of **DeBaene** fails to teach at least one foam pad and a second cloth layer having at least one relatively inelastic portion, much less the foam pad aligned with the inelastic portion of the second cloth to inhibit stretching of the foam pad.

In light of these differences between the cited references and the currently pending claims of the instant application, Applicants submit that **Aldrich**, in view of **DeBaene**, does not teach, and would not suggest to the skilled artisan, all of the limitations of the pending claims and request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Claim 14

The Examiner has also rejected claim 14 as obvious over the combination of **Aldrich** and **DeBaene**, contending that **DeBaene** teaches an inelastic foam pad at column 3, lines 13-18. Lines 13-18 of column 3 of **DeBaene** state:

The inner layer 21 is substantially thicker than the outer layer 19 and is formed of a sheet of closed-cell, foamed polymer, such as polyethylene.

The closed-cell structure insures that the layer be substantially impermeable, while providing a high degree of resiliency.

Applicants submit that this citation fails to teach an inelastic foam pad. **DeBaene** teaches a foam layer that is impermeable and resilient. Claim 14 is directed to at least one relatively inelastic foam pad, in direct contrast to a foam layer having resiliency, (i.e. an elastic foam layer) as taught by **DeBaene**. Furthermore, **DeBaene** teaches a foam layer not a foam pad. The foam layer and the foam pad of the subject invention are separate and distinct foam elements.

Applicants submit that claim 14 is allowable at least due to its dependency from an allowable claim. Applicants further submit that **DeBaene** fails to teach “at least one foam pad” and a “relatively inelastic” foam pad, therefore Applicants request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Claim 15

The Examiner has also rejected claim 15 over the combination of **Aldrich** and **DeBaene**, contending that **DeBaene** teaches an elastic foam pad at lines 13-18 of column 3. As explained above, **DeBaene** teaches a foam layer not a foam pad. The foam layer and the foam pad of the subject invention are separate and distinct elements.

Applicants submit that claim 15 is allowable at least due to its dependency from an allowable claim. Applicants further submit that **DeBaene** fails to teach the “at least one foam pad” of claim 15, and request that the 35 U.S.C. §103(a) rejection be withdrawn.

Claim 17

The Examiner has also rejected claim 17 over the combination of **Aldrich** and **DeBaene**, contending that **Aldrich** teaches a first cloth layer having a relatively inelastic portion substantially aligned with the at least one foam pad. The Examiner specifically references element 51 of Fig. 2 in making this rejection.

Element 51 of **DeBaene** is stitching (see column 2, line 65). The stitching 51 is not the first cloth layer having a relatively inelastic portion, instead the stitching 51 is separate and distinct from the first cloth layer. Furthermore, the stitching 51 is not substantially aligned with the pad. The stitching is positioned on the perimeter of pad (see, Figs. 2 and 3).

Applicants submit that claim 17 is allowable at least due to its dependency from an allowable claim. Applicants further submit that **Aldrich** fails to teach at least the following elements of claim 17: 1) “the first cloth layer comprises a relatively inelastic portion” and 2) “a relatively inelastic portion substantially aligned with the at least one foam pad,” therefore Applicants request that the 35 U.S.C. §103(a) rejection be withdrawn.

Claim 18

Regarding claim 18, the Examiner contends that **Aldrich** and **DeBaene** teach two different foam layers, one being a foam layer and one being a foam pad, respectively. The Examiner further states that the foam layer and the foam pad are made from two different foam materials and therefore would have different densities.

The Examiner does not provide support for this contention. Regarding **Aldrich**, this reference fails to teach one or both of a foam pad and a foam layer. **Aldrich** teaches a single padding 12 comprising “non-woven cotton batting, fleece, or the like” (column 2, lines 42-43). **DeBaene** teaches a single resilient layer 21 comprising “a closed-cell foamed polymer” (column 4, lines 19-20). While **DeBaene** teaches a single foam layer, **DeBaene** fails to teach a foam pad. More specifically, **Aldrich**, in view of **DeBaene**, fails to teach at least one foam pad relatively

denser than the first continuous foam layer. The foam layer and the foam pad of the subject invention are two separate and distinct elements.

Applicants submit that claim 18 is allowable at least due to its dependency from an allowable claim. Applicants further submit that **Aldrich** fails to teach claim 18, therefore Applicants request that the 35 U.S.C. §103(a) rejection be withdrawn.

Claim 19

Regarding claim 19, the Examiner submits that **Aldrich** teaches ‘at least one foam pad comprising a single density.’ The Examiner does not provide a specific citation from **Aldrich** that teaches a foam pad, much less a foam pad having a single density. Moreover, on page 3 of the subject office action the Examiner has indicated that “**Aldrich** fails to teach the pad being foam.” In light of this admission alone, **Aldrich** cannot teach “at least one foam pad having a single density.”

Applicants submit that claim 19 is allowable at least due to its dependency from an allowable claim. Applicants further submit that **Aldrich** fails to teach a foam pad having a single density, therefore Applicants request that the 35 U.S.C. §103(a) rejection be withdrawn.

Claim 50

Regarding claim 50, the Examiner states that **Aldrich** teaches a flexible chamois, and cites column 2, lines 36-41 of **Aldrich** for this element. Applicants believe the Examiner intended to recite line 35-40 of column 2 of **Aldrich**, which read:

As shown in FIGS. 3 and 4, in the first version of the preferred embodiment, the waterproof layer 11 comprises a single generally rectangular sheet of neoprene rubber material 20 having an enlarged thickness T_1 , which provides a generally resilient waterproof barrier for the pad construction 10.

Applicants submit that this disclosure from **Aldrich** refers to “a generally resilient waterproof barrier” and not a flexible chamois and therefore Applicants submit that claim 50 is allowable at least due to its dependency from an allowable claim and further in light of the absence of a flexible chamois in **Aldrich**, and request that the 35 U.S.C. §103(a) rejection be withdrawn.

Claim 57

Regarding claim 57, the Examiner contends that Figure 1 of **Aldrich** shows a “first continuous foam layer coupled to the second cloth layer.”

Applicants respectively submit that **Aldrich** fails to teach a foam layer, much less a foam layer coupled to a second cloth layer. As Applicants presented above, **Aldrich** teaches a single padding 12 comprising “non-woven cotton batting, fleece, or the like” (column 2, lines 42-43). Furthermore, as described above, both **Aldrich** and **DeBaene** fail to teach a second cloth layer. **Aldrich** teaches a waterproof neoprene second layer, while **DeBaene** teaches a leather second layer.

Applicants submit that claim 57 is allowable at least due to its dependency from an allowable claim. Applicants further submit that **Aldrich** fails to teach a first continuous foam layer coupled to the second cloth layer required by claim 57, therefore Applicants request that the 35 U.S.C. §103(a) rejection be withdrawn.

Claim 16

The Examiner has rejected claim 16 under 35 U.S.C. §103(a) as being unpatentable over **Aldrich** in view of **DeBaene** as applied to claim 13, and further in view of **Gareau** (U.S. Patent Publication 2005/0210570). The Examiner contends that it would have been obvious to combine the second cloth layer containing an anti-microbial material (paragraph 0047) with the knee and elbow pads of **Aldrich** and **DeBaene**.

As noted above, the combination of **Aldrich** and **DeBaene** does not teach many of the features of the chamois of the currently pending claims, and that the disclosure of the anti-microbial material of **Gareau** does not overcome the shortcomings of the combination of **Aldrich** and **DeBaene**. Thus, Applicants submit that claim 16 is allowable at least due to its dependency from an allowable claim, and that the combination of **Aldrich**, **DeBaene** and **Gareau** does not teach the limitations of claim 16, therefore Applicants request that the 35 U.S.C. §103(a) rejection be withdrawn.

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Conclusion

Applicants believe that the new claims 59-67 do not introduce new matter and that these new claims are allowable for the reasons stated above with respect to 13-19, 50 and 59.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

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